IN THE

Supreme Court of the United States.

October Term 1904.

No. 44.

THE SAN FRANCISCO NATIONAL BANK,

Appellant,

vs.

WASHINGTON DODGE, AS ASSESSOR OF THE CITY AND COUNTY OF SAN FRANCISCO,

Appellee.

Further Argument for Appellant.

The briefs heretofore presented to the Court on behalf of appellant sufficiently bring to the attention of the Court the several points upon which reliance is placed; yet, and for the purpose of aiding the Court in its examination of the case, a brief elaboration of some of the arguments made is respectfully submitted.

I.

BANK OF CALIFORNIA vs. SAN FRANCISCO, 142 CAL. 276.

This case is cited by counsel for appellee and it is argued in the brief that it is there held and the law of California interpreted to provide, that the full market

value of the stock of a banking corporation is assessed by an assessment of its corporate property, including the franchise; and that it is also held that the system in California contemplates the deduction from the entire market value of the shares of the taxable value of its corporate property and the valuation and assessment of the *franchise* at the balance; or in other words, at the sum of the difference between the market value of the shares and the taxable value of the corporate property.

The counsel does not furnish any statement of the way in which this Court is to ascertain exactly the interpretation placed by the State Court upon the Statute, and it is quite important in this discussion that the proposition should be stated before the case in question can be considered.

We take it that it will be accepted that this Court will consider itself bound only by the result of a case in the State Court and will not consider itself obliged to take without question all that the State Court may have said in search of a ground upon which to base its judgment. That this must be correct appears incontestable, otherwise this Court would find itself in inextricable confusion when it undertook to reconcile the result of cases with the reasons given.

In *Hart* vs. *Burnett*, 15 Cal. 530, 599, one of the great leading cases of California, it is said:

> "A decision is not even authority except upon the point actually passed upon by the Court and directly involved in the case. But even then the mere reasoning of the Court is not authority. The point decided by the Court and which the reasoning illustrates and

explains, constitutes a judicial precedent. The books are full of cases in which learned judges have earnestly deprecated the attempt to urge the mere dicta or the arguments of judges as authoritative expositions of the law."

Cohens vs. Virginia, 6 Wheaton, 399.

Taking the foregoing as the true statement of the rule, it is only necessary to inquire as to the points involved in Bank vs. San Francisco in order to determine the extent of the influence which that case will have in the determination of the one at bar.

For the year 1900 the Assessor valued and assessed the franchise of the Bank of California at the sum of $750,000. The tax thereon was paid and suit brought to recover the payment. Two points were raised:

1. That the franchise was not taxable;
2. That it was overvalued.

The Court held against the bank upon both propositions. In the first place, it held that the franchise of a bank was property within the meaning of the word as used in Section One of Art. XIII of the Constitution. In the second place, it held that the Assessor had the power to fix a valuation on the property assessed and that the remedy of the bank, in cases of excessive valuation, was an application to the Board of Equalization of which it had been afforded an opportunity.

It may be remarked that upon the first point, the Court reversed itself and in the majority opinion ignored the leading authority presented by counsel for the Bank and in which the Court had taken a position precisely opposite to that assumed in the Bank case.

SAN FRANCISCO v. ANDERSON, 103 CAL. 69.

And upon the second point the Court, while admitting that the franchise was not vendible, nevertheless held in effect, but without mention, comment or explanation, that a valuation of such property could be fixed at a sum for which it would be taken in payment of a just debt from a solvent debtor as required by the provisions of the revenue system. In his dissenting opinion, Chief Justice Beatty says that the decision as rendered by the majority of the Court overrules San Francisco vs. Anderson (supra) and holds unconstitutional the Code definition of value set forth in Section 3617, Sub. 5, Political Code; but as no mention of either the former case or of the Code provision is made in the majority opinion it is to be taken that they would not have gone to the extreme mentioned by the Chief Justice, had they deemed it necessary for the decision of the case in hand, to consider either of them.

However, and whatever may be said either in support or criticism of the case, it stands for exactly what it is worth and what its conclusion covers, namely: that a franchise may be taxed and that the Assessor is authorized to put a value upon it, which value, except upon a showing of fraud, cannot be attacked.

In this statement is comprised everything we submit for which the decision can be used, or for which it will be accepted in this tribunal.

At the trial of the Bank case, the parties were not confined, as they might have been, to the real issue, but were allowed to go at large into the question as to the method pursued by the Assessor in reaching his judgment that

the sum of $750,000 was a lawful valuation of the franchise, and it was ascertained that he did consider the market value of the shares and assessed the franchise at about twenty-five per cent of that value.

The Court had already quoted from a former case:

> "The duty of arriving at the valuation was cast upon the Assessor. The method of arriving at the valuation, the process by which his mind reached the conclusion (in case where as here, it is not pretended that he acted fraudulently or dishonestly) is a matter committed to his determination. * * * If he erred in his judgment the remedy was by application to the Board of Equalization, and the Courts will not revise their judgment of these officers upon such questions."

And thereupon and following the foregoing quotation, the Court said:

> "This appears to be determinative of the contention here made." (p. 288.)

Notwithstanding this clear and explicit ruling, the Court then proceeds to devote a considerable portion of its opinion to a consideration of the question as to whether or not the Assessor should, in arriving at his judgment, consider the value of the shares; and it is to the use of such part of the opinion that we now object, and we place our objection upon three grounds:

1. That the reasoning of the opinion cannot be used;

2. That the reasoning of the opinion was not necessary to the conclusion;

3. That the Court had already held that it could not and would not revise the judgment of the Assessor, except in cases of fraud or dishonesty.

It will certainly be conceded that if the Court will revise the judgment of the Assessor as to valuation for the purpose and with the object of giving it support, it would not refuse to do the same thing to protect an overtaxed citizen for the purpose of awarding justice.

The Court does not say that the value of the shares shall be considered by the Assessor in arriving at his judgment, nor does it say that all things entering into and making the value of the shares shall be taxed. It does say:

> "It is clear that *if* the laws of the State *properly* express the intention that everything that gives value to the shares of the corporation shall be assessed as property of the corporation, the true value of those shares is a most important element in determining the value of such property." (p. 289.)

It will be seen that the matter is left open and inasmuch as the Court fails to either state the laws or furnish its construction of them, it contented itself with leaving the question for future consideration. But it will be said that the Court in the use of the foregoing language, was referring to a former decision:

WATER WORKS v. SCHOTTLER, 62 CAL. 69, 117.

This case was a writ of review and arose out of the fact that the Board of Equalization of the City and County of San Francisco had raised the valuation of the property of the Spring Valley Water Works, the corporation engaged in supplying water to San Francisco, by adding thereto an assessment of certain property described as "franchise or franchises" at the sum of Five million

dollars. The case came before the Court upon a petition to review the action of the Board and brought before the Court all the proceedings at the several hearings.

It appeared that the Board of Equalization assessed the franchise of the Water Works by taking the aggregate of the market value of the shares of stock in the Company on the seventh of March, 1881, and deducting therefrom the value of the real and personal property of the Company and held the difference to be the value of the "franchise or franchises." The Court held that the Board possessed the same powers as the Assessor and its valuation imported the same verity and was entitled to the same consideration.

It also appeared that the Company held and enjoyed franchises other than its right of existence, such as the right of eminent domain, the privilege of supplying water to the City and its inhabitants, the privilege of using the streets, alleys and ways of the City for laying down its mains, and the privilege of collecting water rates.

The only point actually before the Court and determined concerned the jurisdiction of the Board of Equalization in its action.

Section 1074, Code of Civil Procedure provides concerning the Writ of Review as follows:

> "The review upon this writ cannot be extended further than to determine whether the inferior tribunal, board, or officer has regularly pursued the authority of such tribunal, board, or officer."

And the Court at the end of its opinion said:

> "Our conclusion is that the Board of Supervisors in its capacity of a Board of Equalization had juris-

diction of the person and subject matter in the matters involved in this cause, and the judgment of the Court below is affirmed." (p. 119.)

The foregoing is the conclusion of the Court and is the only matter for which the case is authority, binding upon this Court under the rule declared in Hart vs. Burnett (supra).

It is true that the arguments of counsel took a wide range, and many propositions were presented which had no relevancy to the precise question involved and which was finally decided. And it is also true that the learned Judge who wrote the opinion considered the propositions of counsel and stated his views thereon at length; but after all the case was finally narrowed down to the point at issue.

In the course of argument by counsel, various objections to the raise in the assessment were made, but with only two of such objections is the present case concerned:

It was contended in the first place, that the petitioner owned no taxable "franchise or franchises"; and in the second place that the "franchise or franchises" which it did own, if taxable, had been overvalued. The Court held against petitioner, as to both objections. As to the first, because the constitution expressly provided for the taxation of franchises; and as to the second, because the Board had, in the exercise of its undoubted power, made the valuation in question (p. 112).

In the opinion will be found a very brief expression of the learned Judge to the effect that everything entering into and giving value to the shares should be taxed; but

we submit that this declaration, though not necessary to the determination of the case and to be treated as dictum, can only be taken to mean that in the judgment of the Court the various rights and privileges of the petitioner, other than its corporate franchise, were objects of taxation. That this interpretation is reasonable and should be accepted, is supported by two reasons.

In the first place, we all know and recognize that "everything entering into and giving value to the shares" never was and never can be taxed without a direct taxation of the shares themselves.

In this and other briefs in the case many things are pointed out which enter into and tend to increase the value of the shares, but which, owing to their nature and character, cannot be valued or taxed.

In the second place, because the Court did, immediately following the use of the expression just noticed, eliminate and declare not taxable, a very important element and one tending largely to increase the value of the shares, and stated its opinion in these words:

> "It is contended that good-will enters into and forms an element in the value of the shares of stock. No case has been produced to us, nor have we been able to find any holding or even intimating that this is so. We find no such element of value in the least hinted at, by any one who has written on the subject, nor has any such been called to our attention. We cannot recognize any such element as giving value to shares in a trading corporation. It would be strange to predicate good-will as pertaining to or extending to an abstraction, to an "artificial being, invisible, intangible, and existing only in contemplation of law." (p. 118.)

Now it must follow that if by the tax laws of California as interpreted by its Court and which interpretation this Court is called to accept without question and without murmur, the good-will of the business of a corporation which by the laws of California is declared to be vendible property (Civil Code, Sec. 993) does not enter into and cannot be considered as an element in the valuation of its shares, then the laws of California do not properly or otherwise express the intention that everything which gives value to the shares shall be assessed.

We all know and freely recognize that good-will is an element in creating a value to the shares. This Court has so held, but under the tax laws of California it is excluded, and hence the Assessor in forming his judgment of the value of the corporate property is obliged, in obedience to the law as interpreted by the Supreme Court, to exclude wholly from consideration the important element of good-will.

This consideration, we submit, taken by itself and without anything further, is alone entirely sufficient to refute the claim of appellee that in California the law requires the taxation of everything making the value of the shares.

But we all know and recognize that other things than good will, and which like it cannot be taxed in California, enter into and are elements in making the market value of shares.

As said by this Court, the value of shares is predicated upon the fact that the corporation "so uses the tangible property which it possesses, so transacts business therein." Again, the skill and efficiency with which the business may be conducted, the character of its enter-

prises, the ability and energy displayed in the management of its affairs, the length of time it has been engaged, the reputation which it has, the credit which it enjoys, its standing, its known solvency and probity, its good name, and finally—and not by any means the least important—the names of the men who control the affairs.

Horace Greeley made the New York Tribune. His name entered largely into and gave to the shares of the Tribune Company a value far in excess of its types, presses and other materials employed in the publication of the paper, and yet it would hardly be said by the most persistent of tax gatherers that the name of Horace Greeley, however much it may have entered into and given value to the shares of the Tribune Company, was a taxable asset.

It must be allowed that the name of John D. Rockefeller as a Director of a Bank, would give its shares a value which the names of men of little or no note in the financial world, would not afford. In the one case, everybody would want the shares, and in the other, though of equal merit, they might seek in vain a market.

It is current news that in England it is a common practice to pay titled men large sums of money to induce them to become the nominal heads of companies whose shares are designed for the general public. These payments are made because the name of a member of the Aristocracy will give a value and standing to shares in the estimation of the public which the name of a commoner would not supply.

Now all will admit that such elements enter into and tend to make the value of the shares, and yet nobody

would, we believe, have the hardihood to claim them as taxable property.

When the case to which the Court referred (Water Works vs. Schottler) is examined, it is readily seen why in the Bank case the Court did not feel itself prepared to hold in terms that the true value of the shares is an element in determining the value of the property for taxation under the California system, and why it preferred to leave the matter undecided and held, as we have shown that *if* the laws *properly* express the intention that everything that gives value to the shares shall be assessed—then the value of the shares become an element for consideration. This language, it is submitted, does not hold the Court to anything and leaves it on a future occasion at full liberty to reconsider the point. It is plain that one of two things occurs: either the Court was unwilling to determine so important a question on the authority of a single unsupported expression found in a former opinion, and that a mere obiter dictum, or it was disinclined to accept as law that expression.

Finally, it is submitted that the Supreme Court of California designed, by its guarded language, to avoid any expression of opinion beyond the mere requirements of the case in hand. This is also apparent from the fact that no attention is given to the statute itself. It is not even cited, yet we know that the Constitution provides that property shall be taxed "in proportion to its value to be ascertained as provided by law." It has been held in California that the section is not self-executing, but merely fixes the liability of property to taxation and the standard upon which it is based, but confides the duty of

prescribing the machinery by which to ascertain the value to the Legislature.

McHenry v. Downer, 116 Cal. 20.

The Legislature, in pursuit of its power, prescribed the machinery by which to ascertain the value, and that action certainly and without possible question, forms the guide for the Assessor. When we look into the action of the Legislature, we find that it is enacted that the corporate property shall be assessed at its full cash value and that such value shall be the sum at which the corporate property would be taken in payment of a just debt from a solvent debtor. Nothing can be found in the law which authorizes, much less directs, the Assessor to consider the value of the shares in his determination. Taking the shares as the measure of the value of the corporate property is wholly foreign to the statute.

The Court, when writing the opinion in Bank of California vs. S. F. well knew the existence of the law, and it is not possible to consider them ignorant of it; and the failure to mention it in the opinion, taken with the indefinite language of the opinion, tends strongly to the conclusion that it was only intended to sustain the action of the Assessor in the case before them. In no other way can the sarcasm of Chief Justice Beatty in his dissenting opinion, wherein he intimates that the majority has declared the tax law unconstitutional, be regarded as undeserved. At the very utmost, all that can be claimed is that the franchise might be valued at the difference between the value of the shares and the corporate property, provided the Assessor could so adjudge honestly and

without fraud; and provided it could be said, in the language of the Supreme Court that the assessment was not "at a valuation greatly in excess of its actual value and greatly above that placed by the assessors on similar property of others."

Tel. Co. vs. Dalton, 119 Cal. 654.

In other words, there is and must be a limit to the powers of the Assessor. Anything else would simply be intolerable. He is to be governed by the statute which, under the authority of the Constitution, was enacted for the purpose of determining his action. He could not proceed and would be without power in the absence of the statute, but taking the claim of counsel in the broad sense in which it is put forth we find him asserting that the statute directs that the Assessor shall value the franchise of the Bank of California at nearly three million dollars. Imagine, if it be possible, such a valuation. The Bank was organized in June, 1864. Its term of existence is fifty years. It has less than ten years of life. Now suppose that a depositor in the Bank, having money to his credit to the amount of three million dollars, should, on demand therefor, be offered the franchise. Is it possible to conceive that any man in his senses would accept the franchise at any such valuation, or consider it full payment of a just debt for the sum named by a solvent debtor? And yet, the Assessor, acting honestly and without fraud and obliged not to place a valuation on the franchise "greatly in excess of its actual value", must, according to counsel for appellee, in order to escape the overthrow of the statute here in question, say on his oath that the franchise

of the Bank of California should be taken in payment of a just debt from a solvent debtor at the enormous sum of Three million Dollars, or, to express it exactly, $2,943,096.92.

The same claim is made as to and applies to the assessments of the franchise of all other Commercial State banks, and the same reasoning as to its correction is applicable.

In conclusion it is submitted that the case of Bank of California v. San Francisco (supra) fails to support its contention of appellee.

But before leaving the case, it may be said that having the present controversy in mind, the Supreme Court well said:

> "In this connection, it will be observed that these elements, so far as they may enter into the value of shares of stock, would be included in an assessment of such shares to the stockholders, a method of assessment which the state is at liberty to adopt,—in fact bound to adopt—unless such shares are otherwise covered by the assessment of the property of the corporation." (p. 289.)

And if, as here shown, the shares are not and cannot be covered by the assessment of the franchise, then it must be agreed that the Court is correct in its dictum that the State is bound to assess the shares.

In the brief of appellee, other cases are cited from California for the supposed purpose of supporting the point first stated.

SAN JOSE GAS COMPANY v. JANUARY, 57 CAL. 614.

There the Court, in a short opinion, said that the fran-

chise of a corporation, in which was included the right to use the streets and alleys, to supply light, and to collect rates, was taxable and that the judgment of the Assessor as to its value, when not attacked for fraud, would not be revised by the Court. Nothing can be found in the opinion material to this investigation.

SAN FRANCISCO v. ANDERSON, 103 CAL. 70, 71.

In this case the question was whether or not a "seat in the San Francisco Stock and Exchange Board" is taxable property. The Court held that it was not. The Court said:

> "It is a mere right to belong to a certain association with the latter's consent and to enjoy certain personal privileges and advantages which flow from membership of such association."

In the view of Chief Justice Beatty, as declared in his dissenting opinion in Bank of California v. San Francisco (supra), this holding applies to the franchise of a Banking corporation, which the Chief Justice says is not transferable or vendible any more than a broker's seat in the Stock and Exchange Board. In this statement he is in harmony with the majority of the Court in whose opinion it is held that the "franchise of being and existing" is incapable of assignment and survives "in the mere fact of corporate existence" after all property capable of assignment has been transferred to others by the corporation. (142 Cal. p. 281.)

It may also be said that the corporate franchise resembles a seat in a Stock Board, in another essential particular: The seat in the Board, as said by the Court, is held

subject to the consent of the Association from which the right to hold it emanates; and likewise, a franchise is held subject to the consent of the State under whose authority it is obtained.

Section 1, Art. XII of the Constitution of California reads:

> "Corporations may be formed under general laws, but shall not be created by special act. All laws now in force in this state concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed."

The citation of the Anderson case by appellee affords the opportunity of exhibiting to the Court the several positions which the Supreme Court of California has assumed in its consideration of the question of taxing franchises and intangible property of like character.

GERMANIA TRUST CO. v. SAN FRANCISCO, 128 CAL. 595.

A reading of this case fails to show any pertinency in the present discussion.

PEOPLE v. NATIONAL BANK, 123 CAL. 53-60.

In this case nothing was decided except that the personal assets of a National Bank, such as "safes and fixtures" and "money" were not taxable.

SAN FRANCISCO v. FRY, 63 CAL. 470.

In this case it was held that under the provisions of Section 3640, shares of stock could be taxed where the property of the corporation was situate in another State and the taxes there were paid by the corporation. If any-

thing of moment can be gathered from this case, it is that shares of stock do not always and for all purposes represent the assets of the corporation, as claimed by counsel for appellee.

In conclusion, it is submitted that in no case has it been held as a conclusion, or said as a dictum, that the system in California contemplates the deduction from the market value of the shares of the taxable value of the corporate property and the valuation and assessment of the franchise at the balance or remainder.

II.

Again and upon another proposition, the Court is now asked to consider further the matter of the deduction of credits from debts, and the defects of the statute in that regard.

The statute in question, and which has been inserted at large in the opening brief, deals wholly with the shareholders of the National Banks, and it undertakes to tax them upon a valuation of their shares. In no way does it attempt to deal with the banks in regard to their personal assets. There is no provision requiring the banks to make statements or to exhibit to the Assessor the value of their resources, or the extent of their liabilities, and no way is pointed out, directly or indirectly, for the ascertainment of these essential facts. The Assessor is without power or authority to require a statement from the banks, and it may also be said that he cannot require any such showing from the shareholders.

Section 3629 of the Political Code treats of the statement and provides that the Assessor must exact from

each person a statement under oath, setting forth specifically all the real and personal property owned by such person or in his possession or under his control at twelve o'clock M. on the first Monday in March."

In regard to solvent credits, the Section provides that the statement shall show: "All solvent credits, unsecured by deed of trust, mortgage or other lien, on real or personal property owing to such person * * * deducting from the sum total of such credits such debts only unsecured by trust deed, mortgage or other lien on real or personal property as may be owing by such person, * * * to bona fide residents of this State."

The provisions of the Code merely provide that the tax payer shall exhibit in his statement his own peculiar solvent credits and from them he is allowed to deduct his own peculiar debts due to bona fide residents of the State. It is nowhere provided that in the statement there shall be included any reference to the credits and liabilities of any bank of which the maker of the statement may be a shareholder. No such thing is contemplated by the statute. It is no part of the machinery provided by the Legislature for the ascertainment of the assessable value of the shares. Hence, the statement of a National bank shareholder, setting forth the solvent credits and debts of the bank, would of necessity be rejected by the Assessor for the reason that he is nowhere authorized to demand or accept it. Section one of Article XIII provides that value for purposes of assessment shall be ascertained "as provided by law." It being held as already said that the clause is not self-executing there must of necessity be

a law providing the mode before the value can be ascertained or an assessment made.

The shareholder is certainly not required to furnish any such statement, and it follows that nothing has as yet been done in California whereby the Assessor can obtain the information in the case of National Bank shareholders, with which he is furnished in the assessment of the property of other persons.

When the language of the statute is considered, the importance of the foregoing suggestions become apparent.

In Section 3609, it is provided in effect, in the first place, that the shares of a National Bank shall be valued and assessed as other property and shall be included in the valuation of the personal property of such stockholders * * * but in the assessment of such shares, each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits, in the same manner as such deductions are allowed by the provision of paragraph 6 of Section 3629 of the Political Code of the State of California."

In the second place it is provided that each stockholder shall be allowed all the deductions permitted by law to the holders of moneyed capital in the form of solvent credits in the same manner as such deductions are allowed by the provisions of paragraph 6 of Section 3629 of the Political Code.

And in the third place it is provided that there shall be deducted from the value of the shares of each stockholder, such sum as is in the same proportion to such value as the total value of the real estate and property exempt

from taxation bears to the whole value of all the shares of capital stock of said National Bank; or in other words, from the gross value of the shares, shall be deducted the real estate and other property.

Looking at these three branches of the section, we see that the mode of valuation is fixed; that the stockholder is declared entitled to deduct from the value of his shares his debts due bona fide residents of the State; and that from the gross value of the shares is to be deducted the value of the real estate and property *of the bank* exempt *by law* from taxation.

As to the second proposition, it need only be said that the Legislature is wholly without power to provide for the deductions of debts from the value of National Bank shares.

In McHenry v. Downer, 116 Cal. 20, 27, the Court said:

> "As National bank shares are property and not *credits*, the Assessor is not authorized to deduct from the value thereof debts due by the owner to others."

The italic is that of the Court.

Hence, it must follow that the provision is a nullity and affords the shareholders no benefit whatever.

As to the third proposition, the same objection arises. The provision in effect says that from the whole value of the shares there shall be deducted the value of the real estate of the bank and of all property of the bank exempt by *law* from taxation. Now, while it may be true that the Bank would, if organized under the State, be allowed to make the deductions provided in the section, it must be clear that the right does not appertain to a National bank

shareholder. There does not appear to be any reason to support the contention that the National Bank shareholders can be legally permitted to deduct from the value of the shares the debts of the Bank. It is no answer to say that the statute so provides, when it is apparent at a glance that the statute is in derogation of Section 1 of Art. XIII of the Constitution of California, wherein it is provided that the Legislature may permit debts to be deducted from *credits* not from other property. Nor will it do to say that the appellee, as Assessor of the City and County of San Francisco has followed the statute as it reads and allowed the deductions. His action, if unauthorized, can form no precedent nor supply a defect in the law.

In short, it is submitted that the taxpayer is entitled to have a legal right founded upon the Constitution, because of which right he is entitled to demand the deductions in question; and it appearing that the Legislature has not provided any such legal right, the statute must be held justly subject to the objection that a National Bank shareholder cannot enjoy the benefits of the deductions in question, while they are granted legally and without question for the advantage of the shareholders in the State Banks.

Further, it appears in this record and from the tabulated statement that there were in the year 1900, and at the time the assessment was made, outstanding solvent credits in San Francisco owned by State Commercial Banks amounting to the sum of $18,501,592, and in other parts of the State of California, State Commercial Banks owned credits amounting to the sum of $21,508,595, all

of which were moneyed capital in the hands of individual citizens of the State of California, and entered into direct competition with the National Banks and from the value of which the State banks were permitted to deduct unsecured debts, but the shareholders of National banks could not under the provisions of the Constitution of California, be allowed the same privilege, directly or indirectly.

Again, it may be said that the statute itself does not contain any authorization justifying the Assessor in allowing the deduction of debts of the Bank from the value of the shares. It is not said in providing for the deductions, that shares shall be treated as solvent credits. In the case of the deductions by the shareholder of his own debts, it was carefully enacted that the mode provided in Subdivision Six of Section 3629, should be followed; but when it came to providing for the deduction of the property of the Bank, no such reference to the other section was made, and it can only be gathered from a strained construction that it was even intended to enact that shares should be treated as credits.

It may also be said in this connection that the case of Bank of Wellington v. Chapman, 173 U. S. 205, does not militate against the position of appellant. There the Court said:

> "Under the Sections of the Revised Statutes which relate to the taxation of these latter cases of banks (Section 2762, etc.) the shares are to be listed by the Auditor at *their true value in money,* which necessarily demands the deduction of the debts of the bank because the true value of the shares in money is necessarily reduced by an amount corresponding to the amount of such debts."

That this rule cannot obtain in California is clear; and that, by its Statutes, as interpreted by its Court, an entirely different rule is established is apparent from a most cursory reading. The Assessor in California is not required to find the *true value in money* of the shares of a National Bank. He is to determine their "*full cash value.*" Hence the Assessor in California would have nothing to do with the value of the corporate assets, and would not deduct anything where he sought to ascertain full cash on market value. It will be conceded that full cash or market value is not ascertained by deducting the debts of the bank nor is any such deduction demanded in the ascertainment of such value.

III.

Finally and in support of the proposition urged at the close of the reply brief of appellant to the effect that it is a reasonable construction of the Act in question to hold that the Legislature really and in fact intended what it said, namely, that from the gross market value of the shares should be deducted the value of all the corporate property leaving the difference between the two values to be assessed and taxed,—it is submitted that the proposition thus advanced is almost susceptible of demonstration.

For the sole purpose of such showing, the Report of the Bank Commissioners of California for the year 1900 and certain well known facts will be used. It is assumed that counsel for appellee, being thoroughly conversant with the Report and with the facts which are used, will not interpose any objection, provided they are confined

to the purpose suggested, that is, of showing the probable intent of the Legislature.

In the following statement the Banks considered are:

1. The Nevada National Bank;
2. The First National Bank;
3. The Crocker-Woolworth National Bank;
4. The San Francisco National Bank;
5. The Bank of California.

The purpose is to exhibit to the Court the results which would follow were the construction of the Statute adopted which is suggested in the closing part of the Reply Brief, and to compare such results with the assessment of the Bank of California.

It is to be remarked that the shares of the Nevada and First National were bought and sold on the Stock and Bond Exchange, while those of the Crocker-Woolworth and the San Francisco National were not so bought and sold, and to arrive at the market value of the shares of the two last named banks, forty per cent is added to the book value, that being the percentage of difference between the book value and the market value of the shares of the First National. The value of the shares of the Bank of California is taken from the record in this case, and it must also be said that in making the calculation in the case of the Bank of California, the franchise is not considered for the reason that prior to the time the statute in question was enacted and up to the time it became a law, no such thing as the assessment of a bank franchise had ever been attempted, and it is reasonable to assume that such assessment was not in the mind of the Legislature.

Nevada National Bank.

Capital	$3,000,000
Reserve	600,000
Profit	398,817
30,000 shares	$3,998,817
Book value	$133
Market value	185
Difference	$ 52
Assessable percentage of market value	28%
Percentage of valuation of book value to market value	72%

First National Bank.

Capital	$1,500,000
Reserve	1,000,000
Profits	157,141
15,000 shares	$2,657,141
Book value	$177
Market value	250
Difference	$ 73
Assessable percentage of market value	29%
Percentage of valuation of book value to market value	70%

Crocker-Woolworth National Bank.

Capital	$1,000,000
Reserve	875,000
Profits	32,989
10,000 shares	$1,907,989

Book value.....$190.79
Market value add 40% to
book value, difference in
First National Bank..... 266.00

Difference .....$ 76.79
Assessable percentage of market value.....28.8%
Percentage of valuation of book value to
market value.....71%

San Francisco National Bank.

Capital $500,000
Profits 102,605

5,000 shares.....$602,605
Book value.....$120.50
Market value in same way
as C. W. Bank..... 168.20

Difference .....$ 47.70
Assessable percentage of market value.....28%
Percentage of valuation of book value to
market value.....71%

Bank of California.

Resources as stated in the agreed
facts $5,906,403.08

20,000 shares.
Book value.....$295
Market value..... 405

Difference $110
Assessable percentage of market value..... 25%
Percentage of valuation of book value to
market value.....72.8%

It will thus be seen that by taking from the market value of the shares of the National banks mentioned and the Bank of California the value of the whole corporate assets, it would leave them to be assessed at the following percentages of the market value of their shares:

Nevada National Bank.....28%
First National Bank.....29%
Crocker-Woolworth National Bank.....28.8%
San Francisco National Bank.....28%
Bank of California.....25%

When these figures are compared with those shown by the assessments as made for the year 1900 of the same Banks, it will be seen that under the system suggested to have been that designed by the Legislature, a much more equitable assessment would have been reached and one largely avoiding the great discrimination of which complaint is made.

We append a statement showing the percentages of the market value of the shares, as appearing in the assessments as made for 1900.

Nevada National Bank.....60%
First National Bank.....64%
Crocker-Woolworth National Bank.....49%
San Francisco National Bank.....61%
Bank of California.....37%

Here and in this last calculation the franchise of the Bank of California is included; otherwise such percentage would be 28.5%.

Respectfully submitted,

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